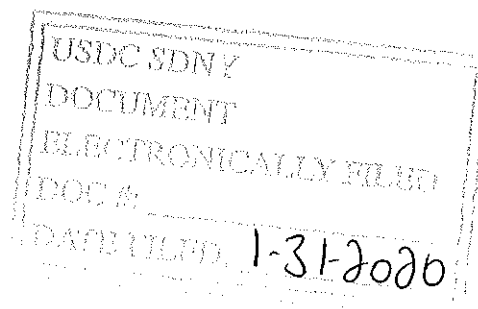


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

*-against-*

JOSHUA ADAM SCHULTE,

*Defendant.*

17 Cr. 548 (PAC)

**ORDER**

HONORABLE PAUL A. CROTTY, United States District Judge:

The Court has reviewed the Government's letter of January 27, 2020, which raised the issue of whether the Government may introduce "the WikiLeaks leak during the trial (*i.e.*, whether the Government will be permitted to introduce the leak as a classified exhibit to only the Court, parties, and jury as requested in its Section 6(a) CIPA motion)." (*See Classified Gov. Letter*, Jan. 27, 2020, at 2.) The Government urges that Section 8(a) of the Classified Information Procedures Act ("CIPA") permits it to introduce evidence as classified exhibits.

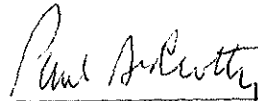
The Government is directed to provide further details on how the classified exhibit will be used at trial. While the Court agrees that Section 8(a) of CIPA permits the Government to introduce information in a classified format without altering its classification status, it does not authorize the Court to close the courtroom to protect classified information. 18 U.S.C. App. III, at § 8(a). *See also* S. Rep. No. 96-823, at 10 (1980), reprinted in 1980 U.S.C.C.A.N. 4294;4304 ("The [Senate Judiciary] Committee intends to take no position on the question whether information which is part of the trial record can be withheld from the public after trial."). The Court finds that showing evidence of the leaks to only the Court, the parties, the defendant, and the jury may be a form of closure, permitted only when necessary to protect a compelling

interest. *See United States v. Pelton*, 969 F. Supp. 156, 157 (D. Md. 1986) (“The Court agrees...that playing of the tapes to only the Court, counsel, defendant, and the jury is a form of ‘closure,’ and may be permitted only in the rarest of cases.”).

Accordingly, if the Government is seeking to introduce the WikiLeaks leaks exhibit to only the Court, the parties, and the jury at trial it should address the factors set forth in *Waller v. Georgia*, 467 U.S. 39, 44 (1984). The Government is directed to address, *inter alia*, what the classified evidence will be offered to prove, the duration of the anticipated closure, the impact on the availability of transcripts, and any other ameliorative measures to assure public access to the evidence notwithstanding the partial closure.

Dated: New York, New York  
January 20, 2020

SO ORDERED



PAUL A. CROTTY  
United States District Judge